

**SEMINOLE COUNTY GOVERNMENT
AGENDA MEMORANDUM**

SUBJECT: Aquamarine USA, Inc.

DEPARTMENT: County Attorney's Office

DIVISION: Litigation

AUTHORIZED BY: Lola Pfeil

CONTACT: Sharon Sharrer

EXT: 7257

MOTION/RECOMMENDATION:

Approve proposed negotiated settlement relating to a tenant's claim for business damages as to Parcel Number 123 on the East Lake Mary Boulevard Phase II project. The proposed settlement is at \$162,107.50 inclusive of business damages, statutory interest, attorney's fees and costs reimbursements and any other compensation or damages for this tenant. Judge Simmons.

District 5 Brenda Carey

Bob McMillan

BACKGROUND:

see attached

STAFF RECOMMENDATION:

Staff recommends the Board approve proposed negotiated settlement relating to a tenant's claim for business damages as to Parcel Number 123 on the East Lake Mary Boulevard Phase II project. The proposed settlement is at \$162,107.50 inclusive of business damages, statutory interest, attorney's fees and costs reimbursements and any other compensation or damages for this tenant.

ATTACHMENTS:

1. Aquamarine USA, Inc.

Additionally Reviewed By: No additional reviews



**COUNTY ATTORNEY'S OFFICE
MEMORANDUM**

To: Board of County Commissioners

Through: Matthew G. Minter, Deputy County Attorney *Matthew G. Minter*

From: David G. Shields, Assistant County Attorney *David G. Shields*
Ext. 5736

Concur: Pam Hastings, Administrative Manager/Public Works Department
David V. Nichols, P.E., Principal Engineer/Engineering Division *[Signature]* 7-3-07

Date: June 25, 2007

Subject: Settlement Authorization
East Lake Mary Boulevard Phase IIB road improvement project
Parcel No. 123
Previous property owner: Florida Land Reserve, Inc.
Business Tenant: Aquamarine USA, Inc.
Seminole County v. King, et al
Case No. 99-CA-2431-13-K

This Memorandum requests settlement authorization by the Board of County Commissioners ("BCC") as to the business damage claim of Aquamarine USA, Inc. ("Aquamarine") on East Lake Mary Boulevard Phase II. Aquamarine was a business tenant on Parcel No. 123 and conducted a boat consignment business. The claim for compensation and damages for this parcel from the property owner, Florida Land Reserve, Inc., was tried by a jury and final judgment was entered in 2005. Resolution of Aquamarine's business damage claim was delayed by Aquamarine filing a Chapter 11 reorganization bankruptcy in 2003 and remaining in Chapter 11 until the bankruptcy case was converted to a Chapter 7 liquidation case on February 21, 2007. The recommended settlement is at the total sum of \$162,107.50 inclusive of business damages, statutory interest, attorney's fees and cost reimbursements. The total sum is allocated as follows:

\$99,000.00	business damages
\$32,670.00	statutory attorney's fees; and
\$30,437.50	expert cost reimbursements.

I PROPERTY

A. Location Data

Parcel No. 123 is located with frontage on State Road 46 at the State Road 415 intersection. The taking of Parcel No. 123 sliced the parent tract into two separate remainders. A location map is attached as Exhibit A and a parcel sketch as Exhibit B.

B. Street Address

The street address is 4115 State Road 46 East, Sanford, FL.

II AUTHORITY TO ACQUIRE

The BCC adopted Resolution No. 96-R-188 on November 28, 1996, authorizing the acquisition of Parcel No. 123 and finding that the East Lake Mary Boulevard Phase II project was necessary, served a public purpose and was in the best interests of the citizens of Seminole County.

III BACKGROUND

In January 2005, the case with the property owner, Florida Land Reserve, Inc., was tried before a jury with full compensation for the value of land determined by a verdict totaling \$286,635.00 for the property owner. The owner's statutory attorney fees totaled \$38,291.55 based upon an initial written offer of \$170,000.00. Subsequent to the trial, the BCC approved a settlement of the owner's expert costs for \$76,892.85.

The jury trial involved land value subject to apportionment of the land value between the owner, tenant and several lien claimants. Aquamarine did not pursue an apportionment claim of the land value but only sought business damages. Because Aquamarine was in bankruptcy at the time of the trial on the owner's claim, the court reserved jurisdiction to consider Aquamarine's business claim at a later time.

Early in the eminent domain case, Aquamarine hired an accountant and other experts to evaluate a possible business damage claim against Seminole County. The accountant prepared a preliminary report dated December 23, 2002, opining business damages to be \$945,000.00, based on a complete loss of Aquamarine's ability to continue to conduct business from the location where the property was taken. Shortly after this report, Aquamarine filed bankruptcy and did not actively pursue its business damage claim until this year.

Between the late 2002 business damage claim and the May 1, 2003 bankruptcy filing, Aquamarine became the subject of an extensive criminal

investigation and multiple civil lawsuits alleging fraud and other misconduct. According to the Seminole County State Attorney's office, 162 victims reported a total monetary loss of \$997,000.00. Aquamarine was in the boat consignment business. Allegedly, individuals involved with the company were selling consigned boats without paying the seller and receiving payments from the buyers without providing titles to the boats. These events pushed Aquamarine into bankruptcy.

IV BUSINESS DAMAGES

At the time of the taking, Aquamarine's business had been in operation since 1997 and it therefore qualifies for business damages since the actual order of taking did not occur until October 10, 2002.

A. County's Business Damage Report

A business damage analysis has not been performed on behalf of the County. The County postponed incurring this expense while Aquamarine was in bankruptcy and did not actively pursue this claim.

The costs for a CPA to prepare a full business damage report are considerable. This expenditure is presently on hold pending this settlement. If settlement is not concluded by this recommendation, then a business report will need to be prepared. However, the County's expert is aware of the proposed settlement and considers it reasonable under the circumstances of this case.

B. Tenant's Business Damage Report

The tenant had a preliminary business damage report with a marketing report by Pober, Yespelkis and Associates, Inc., and business damage report by Duke Parrish, CPA to opine business damages totaling \$945,000.00. The business damages report claims a complete loss of the business as a result of the taking.

V BUSINESS DAMAGE NEGOTIATION

In early 2007, Aquamarine, through its Chapter 11 bankruptcy attorney, proposed to settle the business damage claim for \$99,000.00 plus statutory attorney fees and costs, approximately 10% of the original claim.

When the case converted to a Chapter 7 bankruptcy liquidation, the Chapter 7 trustee agreed to the same deal. Under the proposed settlement, the business damages compensation will be paid directly to the Chapter 7 trustee for distribution to Aquamarine's creditors. Aquamarine itself and its principals will not receive these proceeds.

VI ATTORNEY'S FEES AND COSTS

A. Attorney's Fees

Attorney fees in this matter are controlled by the Florida eminent domain statutes. If the case settles for \$99,000.00 in damages, attorney fees are 33% of \$99,000.00 or \$32,670.00. The attorney fees are to be split equally between two attorneys who represented Aquamarine at different stages of this case.

B. Cost Reimbursements

Aquamarine claimed expert cost reimbursements totaling \$30,437.50 and allocated:

Charles Cawthra & Associates, Inc.	\$ 9,125.00
Pober, Yespelkis and Associates, Inc.	\$12,956.25
J. Duke Parrish	\$ 8,356.25

These experts all contributed to Aquamarine's evaluation of its business damage claim and appear recoverable under Florida law.

VII RATIONALE AND COST CONTROL

This taking sliced the parent tract in half, leaving two separate remainders. Ordinarily, it would be difficult to argue this taking had no consequence on Aquamarine's business, although the taking probably would not have been drastic enough by itself to destroy Aquamarine's business completely as alleged by Aquamarine experts.

On the other hand, it is reasonable to conclude that an extensive criminal investigation and multiple civil lawsuits following widespread consumer allegations of fraud and other misconduct against Aquamarine would damage or destroy its business to an extent to completely overshadow and subsume any business damage caused concurrently by eminent domain. The matters related to the criminal investigation and the civil lawsuits do not appear to have been considered in Aquamarine's business damage report.

At the same time, it is uncertain how much of this story about the alleged fraud that the court would allow the jury to hear. If the jury only hears about how the taking cut the business in half, then Aquamarine might obtain a significant recovery. If the jury hears about the alleged fraud, Aquamarine might obtain nothing. The one certain thing is that the County would have significant expert costs to go forward. This case would be expensive and complicated to take to trial. The County might also have to pay the other side's costs and attorney fees depending on the outcome of any trial.

All in all, both sides would have significant litigative risks taking this case to trial. A settlement where the County pays only approximately 10% of the original claim is an excellent result under these circumstances. It bears repeating that the settlement proceeds will be paid to the bankruptcy trustee for distribution to Aquamarine's creditors and not to Aquamarine.

VIII RECOMMENDATION

County staff recommends that the BCC approve this settlement in the total amount of \$162,107.50 inclusive of business damages, statutory interest, statutory attorney's fees, cost reimbursements and any other compensation or damage which might be due Aquamarine.

DGS/dre

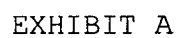
Attachments

Exhibit A – Location map

Exhibit B – Parcel Sketch

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DAVID JOHNSON



STATE ROAD 46 SEMINOLE COUN. FLORIDA
 PARCEL A - SKETCH OF SURVEYED PARCEL
 PARCEL DESCRIPTION: COMMERCIAL
 AQUAMARINE BOAT SALES
 AREA OF PARENT TRACT = 174,225 S/F (4.00 ACRES)
 AREA OF TAKING = 48,167 S/F (1.08 ACRES)
 AREA OF REMAINDER = 126,058 S/F (2.92 ACRES)

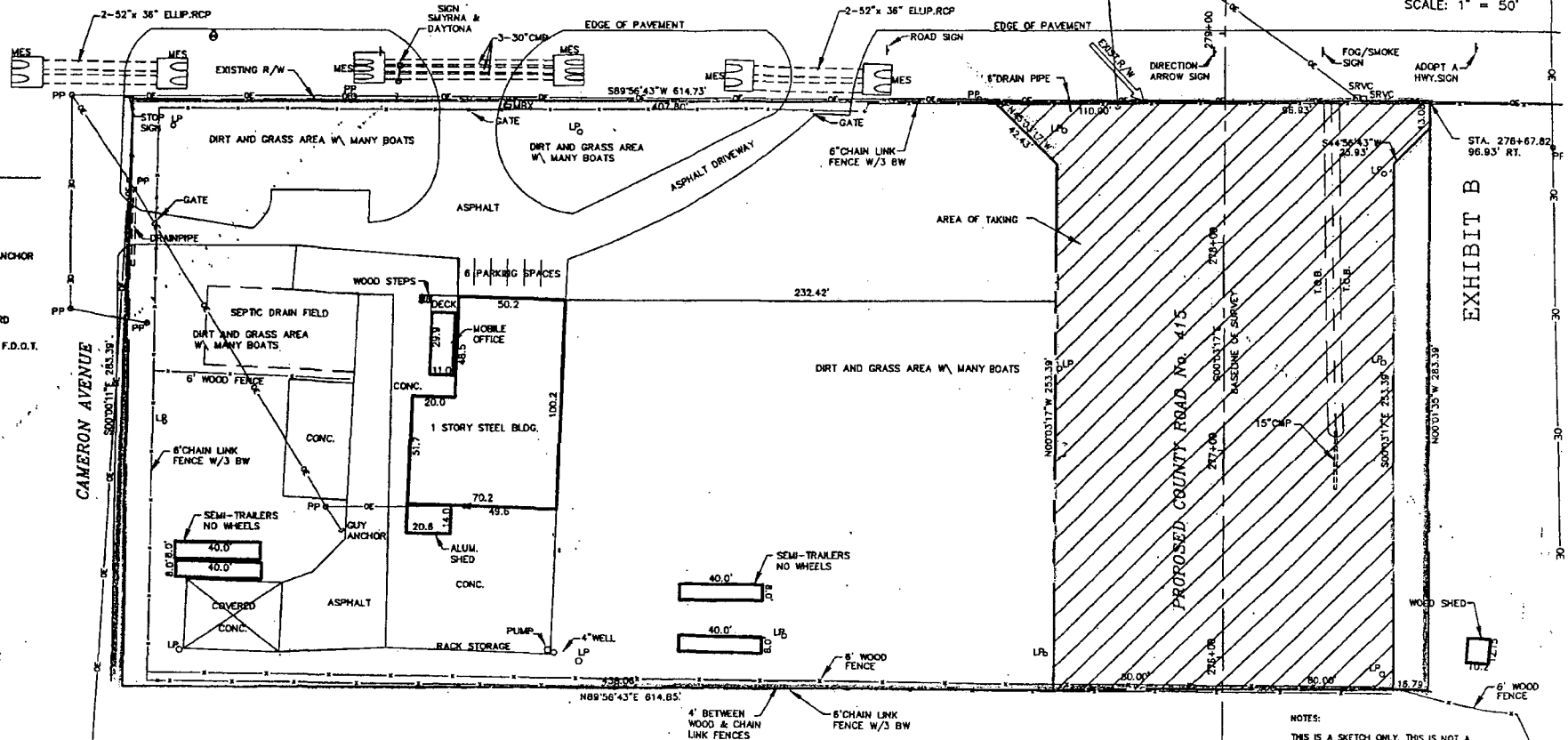
STATE ROAD No. 46



0 25 50
 SCALE: 1" = 50'

LEGEND

- SMALL LANDSCAPE TREE
- PALM TREE
- SYCAMORE TREE
- UTILITY POLE AND GUY ANCHOR
- POWER POLE
- SIGN
- WATER METER
- R/W
- (C) CALCULATED FROM RECORD (PROVIDED BY F.D.O.T.)
- (S) CALCULATED FROM BOTH F.D.O.T. AND SURVEY DATA
- (D) DEED MEASUREMENT (PROVIDED BY F.D.O.T.)
- BROKEN SCALE
- EOP
- FNAC
- BFP
- W/V
- D/W
- BATTERED END SECTION
- LANDSCAPED AREA
- SV
- CO
- FH
- LP
- PB
- S.W.
- SSP
- TP
- OT
- TRVC
- MD
- MS
- MW
- SH
- ELO



NOTES:
 THIS IS A SKETCH ONLY, THIS IS NOT A BOUNDARY SURVEY
 THE PURPOSE OF THIS SKETCH IS TO AID IN THE APPRAISAL OF THE SUBJECT PARCEL.
 ALL BOUNDARY INFORMATION AND CALCULATIONS ARE BASED ON SEMINOLE COUNTY PUBLIC WORKS RIGHT OF WAY MAPS AND TITLE WORK, COUNTY ROAD 415.

KEY	DATE	REVISIONS
	10/04/01	REVISED BOUNDARY AND ADDED SURVEY DATA
	10/09/01	REVISED BOUNDARY
	12/19/01	REVISED PER APPRAISER COMMENTS
	2/12/02	REVISED PER APPRAISER COMMENTS (GRP)

SKETCH DATE: 4/4/01
 FIELD BOOK/PAGE: F.B. 32/29-30

CORNERSTONE
 LAND SURVEYING, INC.

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 2837 FISHCROFT DRIVE
 TALLAHASSEE, FLORIDA 32308

PHONE: (850) 888-7330
 MOBILE: (850) 833-7115
 FAX: (850) 884-9893

PROJECT: C.R. 415 - SEMINOLE COUNTY - PARCEL A

SHEET TITLE: SKETCH OF SURVEY
 PARENT TRACT & AREA OF TAKING

CLIENT: KELLY, COLLINS & GENTRY

JOB NO.: KCG01415
 SHEET NO.: 2 of 3